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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,237	01/23/2004	Bruce A. Rogers	ROG030.10005	8491

41716 7590 05/14/2008
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EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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05/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/764,237	Applicant(s) ROGERS ET AL.	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/26/08 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilde (United States Patent No. 870,330).

Wilde discloses a device comprising a first body member **a** and a second body member **(at 12)**. The first and second body members include gripping portions 7,11 adapted to be squeezed by a user. Hinge means 19 pivotally connect the body members. The device further includes adjustment means coaxially arranged with

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respect to the hinge means for causing the gripping portions to remain at a point at which the gripping portions are squeezed together by a user. The adjustment means comprises a slip friction mechanism. The slip friction mechanism includes an irregular first surface 10 associated with the first body member, an irregular second surface 15 associated with the second body member, and a compression spring 18 for maintaining contact between the first and second surfaces. The irregular surfaces include toothed surfaces.

Claims 1, 3-7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheehan (United States Patent No. 3,546,750).

Sheehan discloses a device comprising a first body member 22 and a second body member 24. The first and second body members include gripping portions adapted to be squeezed by a user. Hinge means 38 pivotally connect the body members. The device further includes adjustment means coaxially arranged with respect to the hinge means for causing the gripping portions to remain at a point at which the gripping portions are squeezed together by a user. The adjustment means comprises a slip friction mechanism. The slip friction mechanism includes an irregular first surface 32 associated with the first body member, an irregular second surface 35 associated with the second body member, and a biasing mechanism 38 for maintaining contact between the first and second surfaces. The irregular surfaces include toothed surfaces. One of the surfaces is provided on an insert (see figures 4 and 7).

Claims 1, 3 and 12-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Rizzuto (WO 02/058504).

Rizzuto discloses a device comprising a first body member (20) and a second body member (22). The first and second body members include gripping portions 12, 14 adapted to be squeezed by a user (via handles 30, 23). Hinge means 10 pivotally connect the body members. The device further includes adjustment means coaxially arranged with respect to the hinge means for causing the gripping portions to remain at a point at which the gripping portions are squeezed together by a user. The adjustment means comprises a slip friction mechanism. The slip friction mechanism includes a first surface 23 associated with the first body member, a second surface 25 associated with the second body member, and a spring 26 for maintaining contact between the first and second surfaces. The spring is a torsion spring connected to each of the first and second body members. The device further includes handle portions 30, 32 on each of the first and second body members.

Response to Arguments

The affidavit under 37 CFR 1.132 filed 2/26/08 is insufficient to overcome the rejection of claims 1, 3-7, 11-15 based upon the 102 (b) rejections of Wilde, Sheehan and Rizzuto as set forth in the last Office action because:

Both declarations of LaFauci and Revson state that the claimed invention solved a problem that was long felt need in the art. Applicant is noted that there is no objective evidences of one of an ordinary skill in the art were working on the problem for a long

period of time without solution and if so, how long; also, the declarations fails to show objective evidence of nonobviousness which is commensurate in scope with the claims.

In response to Applicant's argument that Wilde's device is not a hair holding device; Applicant is noted that such recitation recites in the preamble and Wilde has shown all the claimed structures in the body of the claim; therefore, the preamble is not given patentable weight. Also, Applicant has argued that the clamping surface areas of the device are very small, and if they were attempted to clamp the hair of the user, they would clamp a few strands of hair; such arguments shows that the clamping surface areas of Wilde are capable to hold the hair of the user, how much of hair being retained within the clamping surface areas are subjected to the type of the user's hair (thick or thin).

Applicant has further argued that the claims are structurally distinguishable from the Sheehan device, however, Applicant fails to point out which elements of Sheehan result structural difference than the claimed invention.

Applicant has also argued that gripping portions (12, 14) of Rizzuto are not adapted to be squeezed by a user; Gripping portions do adapt to be squeezed by a user via handle 30, 32 (paragraph 23 of Rizzuto).

Conclusion

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS**

MADE FINAL even though it is a first action in this case. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
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